

From: [Christina Adkins](#)
To: [Sam Taylor](#)
Subject: FW: City of Palmview
Date: Monday, December 03, 2018 2:33:13 PM

From: Eric Flores [mailto:]
Sent: Monday, December 03, 2018 2:31 PM
To: Christina Adkins <CAdkins@sos.texas.gov>
Subject: City of Palmview

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Received.

On Mon, Dec 3, 2018 at 9:44 AM Christina Adkins <CAdkins@sos.texas.gov> wrote:

Eric,

As we discussed on the telephone, our advice is as follows.

1. Under Section 2.051 of the Texas Election Code the mayoral candidate race for the City of Palmview was not properly canceled because there were two opposed at-large races on the ballot and the candidate did not receive the vote/s required in order to be elected. A vacancy has now occurred. The vacancy was created on the date of the canvass. See Tex. Att'y Gen. Op. No. O-497 (1939); Sec'y State Op. No. JWF-36 (1984). A special election under Article 11 Section 11 of the Texas Constitution must be held within 120 days from the date the vacancy was created because your candidates are elected to four year terms. Further, the mayoral candidate will have to be elected by a majority vote in the special election pursuant to Article 11 Section 11.
2. Generally, the prior mayor would hold over. However, the mayoral candidate was given a certificate of election and was sworn in against our office's advice. Because the mayoral candidate was given a certificate of election and was sworn in, our office believes that the current mayor sworn in should serve in office until a pending special election is held to fill the vacancy. See *Pyote Independent School District v. Estes*, 390 S.W.2d 3, 5 (Tex.Civ.App.-El Paso 1965, writ ref'd n.r.e.) (in order to protect the public and individuals, an officer whose election or appointment might be illegal and invalid is still a de facto official). To our knowledge, the candidate is not otherwise ineligible. The special election is for the remainder of the term.

We note that our office opines on state election law; we do not opine directly on city charters. We defer to the city attorney as to whether any charter language about the mayor pro tem controls over our general advice.

3. As noted, under Article 11, Section 11 of the Texas Constitution, a special election must be held within a 120 days to fill the vacancy. This opens the filing period to all eligible candidates. See Election Code Section 201.054 for the filing deadlines generated, depending on when the city orders the election. Please note that although you have 120 days from the date of the vacancy to hold the election, the city must order the election **by the 46th day before election day** in order to have an authorized filing deadline under law.

Sec. 201.054. FILING PERIOD FOR APPLICATION FOR PLACE ON BALLOT.

(a) Except as provided by Subsection (f), a candidate's application for a place on a special election ballot must be filed not later than:

(1) 5 p.m. of the 62nd day before election day, if election day is on or after the 70th day after the date the election is ordered; or

(2) 5 p.m. of the 40th day before election day, if election day is on or after the 46th day and before the 70th day after the date the election is ordered.

(b) If a special election is to be held as an emergency election and a law outside this code prescribes a filing deadline, that deadline applies.

(c) The election order must state the filing deadline.

(d) An application may not be filed before the election is ordered.

(e) An application filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(f) For a special election to be held on the date of the general election for state and county officers, the filing deadline is 6 p.m. of the 75th day before election day.

(g) A declaration of write-in candidacy for a special election must be filed not later than the filing deadline prescribed by this section.

Additionally, we strongly advise you to exercise caution regarding any official acts made by the defacto mayor. We understand that you are in contact with Texas Municipal League and we would suggest continuing to seek their advice on council actions involving the mayor until this is resolved through your special election. Regardless of what course of action you pursue to remedy the situation, there is a question as to the validity of your de facto mayor's ability to currently occupy the office. For example, see Section 601.008, Texas Government Code. Please be advised that your district attorney or the attorney general could always seek a quo warranto action under Chapter 66 of the Civil Practice and Remedies Code and seek removal of the de facto mayor from office.

Please let us know that you have received this email. If you have any additional questions or concerns, please don't hesitate to contact us.

Thank you,

Christina Worrell Adkins

Legal Director – Elections Division

Office of the Texas Secretary of State

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